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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,651	08/07/2001	Kevin P. Headings	108.0010-00000	9189
22882	7590	09/09/2008		
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER WORJLOH, JALATIE	
			ART UNIT 3685	PAPER NUMBER
			MAIL DATE 09/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/922,651

**Applicant(s)**

HEADINGS ET AL.

**Examiner**

Jalatee Worjloh

**Art Unit**

3685

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15, 19-22, 41-49 and 60-87 is/are pending in the application.
- 4a) Of the above claim(s) 60-87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 19-22 and 41-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 1/15/08 & 7/30/2008

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 30, 2008 has been entered.
2. Claims 1-15, 19-22, 41-49, 60-87 are pending.

***Response to Arguments***

3. Applicants' arguments filed July 30, 2008 have been fully considered but they are not persuasive.
4. Applicants' argued that neither Downs nor Swix teach at least one processor and a graphical user interface (GUI)including fields, said processor and said graphical user interface adapted for permitting the operator to group individual consumers into at least the first and the second of the selected grouping based on at least one of a geographical location, a bit rate service, a service provider, and a contractual term, the first and the second of the selected groupings of the consumers receiving the first and the second rollouts, respectively.

The Examiner respectfully disagrees. Downs teaches a Clearinghouse that has repository capabilities and a database. In one embodiment the Clearinghouse is a web site (GUI) including input fields accessible to the end-user device (see col. 11, lines 10-28; figures 7, 14, and 16). Thus, the database of the clearinghouse must be stored on a computer medium, which is known to have processors.

The claims recite the functional language for (e.g. "said graphical user interface adapted for permitting"). Applicant is reminded that functional recitation(s) using the word "for" or other functional language have been considered but given less patentable weight because they fail to add any steps and are thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in additional steps. See *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed. Cir. 2001) (Where the language in a method claim states only a purpose and intended result, the expression does not result in a manipulative difference in the steps of the claim.).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-22 and 41-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al. U.S. Patent 6,226,618 in view of Swix et al., U.S. Patent 6,718,551.

7. As per claims 1-22, and 41-49 Downs et al. teach a system for providing content to users comprising:

- a (local) content database or repository storing the media content offering delivered from said content management system, a rack that receives the media content offering from said content management system, said rack including a file repository for storing media content associated

with the media content offering and a server distributing media content stored in said file repository (figures 1D, 5, 6, 10 and 14; column/line 68/47-70/39)

- a processor that combines media assets and metadata (figure 1) combining media assets and metadata based on selected groupings of the consumers to create a media content offering for each selected grouping of the consumers, said content management system selecting the media content offering for distribution to the selected groupings of the consumers based on at least one of a geographical location, a bit rate service, a service provider, and a contractual term (e.g. specifying a provider) and to aggregate the selected media content offering into a rollout available for exhibition to the consumers (column 26, lines 5-30; column 39, lines 10-20; column 48, lines 45-50; column 54, lines 30-35; column 59, lines 15-30; column 69, lines 1-27)
- a subscriber management system for creating a plurality of subscriber accounts, said subscriber management system including at least one processor, a graphical user interface including input fields and at least one medium for storing subscriber account information, said processor being operable to maintain the subscriber accounts and includes a procedure for billing the subscriber accounts, said subscriber management system being operable to group individual consumers into the selected groupings for receiving selected media content -offering specific for at least one of the selected groupings (column 23, lines 15-20; column/line 45/65-47/25)
- subscriber management system processor that manages consumer- related information, further comprising a database for storing the consumer related information (e.g. billing, demographics) (column 23, lines. 15-20; column/line 45/65-47/25)
- collecting information associated with the use of media content selected from the media content offering by each consumer (e.g. content use information includes consumer media content

preferences) (column 23, lines 15-20; column/line 45/65-47/25)

- server for licensing content and license terms or rules (e.g. content offer expires after a length of time, price) (column 25, lines 20-35; column 26, lines 5-35; column 59, lines 33-67)

- license includes a decryption key program adapted to decrypt media

content that is encrypted (column/line 81/62-82/5; column 83, lines 2-15) • subscriber management processor checking an accounts database and

determine whether the consumer is permitted to use the selected media content (column 23, lines 15-20; column/line 45/65-47/25)

Regarding first and second groupings, Downs et al. teach placing multiple items for purchase (column 29, lines 30-35) in a single container (column/line 28/15- 30/62) (i.e. aggregating content) and making the content available at a content hosting site a (column/line 70/40-72/63) such as Columbia House Online (column 70, lines 43-59; column/line 71/65-72/4). Downs et al. also teach that these sites offer incentives, establishes customer loyalty and markets products as is known in the art (column 72, lines 8-11). For example, it is well known to those of ordinary skill in retail to determine what products to offer based on sales and customer demographics. Swix et al. teach collecting user demographics and viewing habits (e.g. length of time) then using the collection to provide content to users (column/line 1/43-2/2; column 2, lines 30-48; column 3, lines 48-64). Downs et al. disclose a store for distributing content to end-users (column/line '9/60-10/35). Swix et al. teach an ad manager collecting user demographics and viewing habits then using the collection to provide content to users (column/line 1/43-2/2; column 2, lines 30-48; column 3, lines 48-64). Therefore, it would have been obvious to one of ordinary skill for the store of Downs et al. to use stored transaction data (e.g. what was

purchased, identity of purchaser) ('618, figure 16; column/line 45/65-47/5; column 72, lines 8-11) to choose (i.e. refresh or update it's database of offerings) what content (e.g. Mariah Carey, Morrissey, etc.) it makes available to consumers. And, to one of ordinary skill "selected groupings of consumers" are those consumers that have been targeted using the method disclosed by Swix et al. for ads promoting certain artists (e.g. Mariah Carey).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jalatee Worjloh whose telephone number is 571-272-6714. The examiner can normally be reached on Monday - Friday 10:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt II can be reached on 571-272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and 571-273-6714 for Non-Official /Draft.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jalatee Worjloh/

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Primary Examiner, Art Unit 3685